

The stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

ISSUES

- (1) Whether claimant suffered personal injury by accident on the date alleged;
- (2) Whether claimant's accidental injury arose out of and in the course of his employment;
- (3) Whether claimant provided notice to the respondent within a timely fashion and if not whether respondent was prejudiced by this lack of notice;
- (4) The nature and extent of claimant's injury and/or disability;
- (5) Claimant's entitlement to medical, both future and unauthorized; and
- (6) The liability, if any, of the Kansas Workers Compensation Fund.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, and in addition the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

The Appeals Board finds the Award of the Administrative Law Judge as specifically set forth fully sets out the opinion of the Appeals Board regarding the findings of fact and conclusions of law pertinent to this matter. In so finding, the Appeals Board adopts in toto the Award of the Administrative Law Judge and incorporates same as its own Award herein.

The evidence as presented supports a finding that claimant is entitled to a nine percent (9%) functional whole body impairment through the date of claimant's layoff on June 27, 1991. Thereafter, claimant is entitled to a thirty percent (30%) whole body permanent partial work disability, based upon the evidence of Karen Crist Terrill, and pursuant to the logic set forth in Lee v. Boeing Military Airplanes, 21 Kan. App. 2d 365, 899 P.2d 516 (1995).

In computing claimant's award through June 27, 1991, the average weekly wage of \$581.05 is appropriate as claimant is, pursuant to K.S.A. 44-511, still receiving the fringe benefits to which he was entitled with respondent. Subsequent to claimant's lay off on June 27, 1991, these fringe benefits ceased and claimant's average weekly wage would increase to \$679.05 per week.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge John D. Clark, of May 12, 1994, shall be and is hereby affirmed and claimant is granted an award against respondent, a qualified self-insured, for an injury sustained on January 20, 1989. Claimant is entitled to 81.57 weeks temporary total disability compensation at the rate of \$263.00 per week in the amount of \$21,452.91, followed thereafter by 45.29 weeks permanent partial whole body disability at the rate of

\$34.86 per week in the amount of \$1,578.81, followed thereafter by 288.14 weeks permanent partial general body work disability at the rate of \$135.82 per week in the amount of \$39,135.17 making a total award of \$62,166.89.

As of October 20, 1995, there would be due and owing to claimant 81.57 weeks temporary total disability compensation at the rate of \$263.00 per week in the amount of \$21,452.91, followed thereafter by 45.29 weeks permanent partial general body disability at the rate of \$34.86 per week totalling \$1,578.81, followed thereafter by 225.14 weeks permanent partial general body disability at the rate of \$135.82 per week in the amount of \$30,578.51, making a total due and owing of \$53,610.23 less any amounts previously paid. Thereafter, claimant is entitled to 63 weeks permanent partial general body work disability at the rate of \$135.82 per week in the amount of \$8,556.66 until fully paid or until further order of the Director.

Medical expenses incurred by claimant as a result of his accidental injury are awarded to be paid by respondent as set forth in the Award of the Administrative Law Judge.

Liability against the Kansas Workers Compensation Fund is herein denied with the exception that the Workers Compensation Fund shall be liable for its own attorney's fees.

The fees necessary to defray the expense of the administration of the Workers Compensation Act are hereby assessed against the respondent to be paid as follows:

Ireland and Barber	
Transcript of Preliminary Hearing	\$161.10
Transcript of Preliminary Hearing	\$149.70
Deposition Services	
Deposition of Robert L. Eyster	\$188.20
Deposition of Jerry D. Hardin	\$264.20
Transcript of Regular Hearing	\$201.10
Deposition of Karen Crist Terrill	\$146.60
Deposition of Robert W. Hamrick	\$185.60

IT IS SO ORDERED.

Dated this ____ day of October, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Warren R. Southard, Wichita, Kansas
 Frederick L. Haag, Wichita, Kansas
 Andrew E. Busch, Wichita, Kansas
 John D. Clark, Administrative Law Judge
 Philip S. Harness, Director